UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/48/303
24 August 1993
ENGLISH
ORIGINAL: ARABIC/CHINESE/
ENGLISH/FRENCH/
RUSSIAN/SPANISH

Forty-eighth session
Item 145 of the provisional agenda*

REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-FIFTH SESSION

Note by the Secretary-General

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* A/48/150 and Corr.1.

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I. INTRODUCTION

1. The International Law Commission, established in pursuance of General Assembly resolution 174 (II) of 21 November 1947, in accordance with its statute annexed thereto, as subsequently amended, held its forty-fifth session at its permanent seat at the United Nations Office at Geneva from 3 May to 23 July 1993.

2. The Commission's agenda for its forty-fifth session consisted of the following items:

1. Organization of work of the session.

2. State responsibility.

3. Draft code of crimes against the peace and security of mankind.

4. The law of the non-navigational uses of international watercourses.

5. International liability for injurious consequences arising out of acts not prohibited by international law.

6. Programme, procedures and working methods of the Commission and its documentation.

7. Cooperation with other bodies.

8. Date and place of the forty-sixth session.

9. Other business.

3. The work of the Commission during its forty-fifth session is described in its report to the General Assembly. 1/ Chapter I of the report is entitled "Introduction". Chapter II is entitled "Draft Code of Crimes against the Peace and Security of Mankind" and concerns the question of a draft statute for an international criminal court. The text of a draft statute worked out by a working group of the Commission is annexed to the report. Chapter III relates to the topic "International liability for injurious consequences arising out of acts not prohibited by international law". Chapter IV is devoted to the topic "State responsibility" and contains the text of six draft provisions on that topic with commentaries thereto adopted at the forty-fifth session of the Commission. Chapter V concerns the topic "The law of the non-navigational uses of international watercourses". Chapter VI deals with matters relating to the programme, procedures and working methods of the Commission and its documentation, as well as cooperation with other bodies, and also refers to certain administrative and other matters.

1/ Official Records of the General Assembly, Forty-eighth Session, Supplement No. 10 (A/48/10).

4. For the convenience of the delegates to the forty-eighth session of the General Assembly, the draft articles provisionally adopted by the Commission at its forty-fifth session on the topic of State responsibility are reproduced below.

II. DRAFT ARTICLES ON STATE RESPONSIBILITY

PART TWO

Paragraph 2 of article 1*

2. The legal consequences referred to in paragraph 1 are without prejudice to the continued duty of the State which has committed the internationally wrongful act to perform the obligation it has breached.

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Article 6

Cessation of wrongful conduct

A State whose conduct constitutes an internationally wrongful act having a continuing character is under the obligation to cease that conduct, without prejudice to the responsibility it has already incurred.

Article 6 bis

Reparation

1. The injured State is entitled to obtain from the State which has committed an internationally wrongful act full reparation in the form of restitution in kind, compensation, satisfaction and assurances and guarantees of non-repetition, as provided in articles 7, 8, 10 and 10 bis, either singly or in combination.

2. In the determination of reparation, account shall be taken of the negligence or the wilful act or omission of:

(a) the injured State; or

(b) a national of that State on whose behalf the claim is brought

which contributed to the damage.

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* Article 1 was adopted at the thirty-fifth session of the Commission (see Yearbook of the International Law Commission, 1983, vol. II (Part Two), p. 42).

3. The State which has committed the internationally wrongful act may not invoke the provisions of its internal law as justification for the failure to provide full reparation.

Article 7

Restitution in kind

The injured State is entitled to obtain from the State which has committed an internationally wrongful act restitution in kind, that is, the re-establishment of the situation that existed before the wrongful act was committed, provided and to the extent that restitution in kind:

(a) is not materially impossible;

(b) would not involve a breach of an obligation arising from a peremptory norm of general international law;

(c) would not involve a burden out of all proportion to the benefit which the injured State would gain from obtaining restitution in kind instead of compensation; or

(d) would not seriously jeopardize the political independence or economic stability of the State which has committed the internationally wrongful act, whereas the injured State would not be similarly affected if it did not obtain restitution in kind.

Article 8

Compensation

1. The injured State is entitled to obtain from the State which has committed an internationally wrongful act compensation for the damage caused by that act, if and to the extent that the damage is not made good by restitution in kind.

2. For the purposes of the present article, compensation covers any economically assessable damage sustained by the injured State, and may include interest and, where appropriate, loss of profits.

Article 10*

Satisfaction

1. The injured State is entitled to obtain from the State which has committed an internationally wrongful act satisfaction for the damage, in particular moral damage, caused by that act, if and to the extent necessary to provide full reparation.

2. Satisfaction may take the form of one or more of the following:

(a) an apology;

(b) nominal damages;

(c) in cases of gross infringement of the rights of the injured State, damages reflecting the gravity of the infringement;

(d) in cases where the internationally wrongful act arose from the serious misconduct of officials or from criminal conduct of officials or private parties, disciplinary action against, or punishment of, those responsible.

3. The right of the injured State to obtain satisfaction does not justify demands which would impair the dignity of the State which has committed the internationally wrongful act.

Article 10 bis

Assurances and guarantees of non-repetition

The injured State is entitled, where appropriate, to obtain from the State which has committed an internationally wrongful act assurances or guarantees of non-repetition of the wrongful act.

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* The substance of article 9 (Interest) as proposed by the Special Rapporteur was incorporated in paragraph 2 of article 8. Hence the gap in the sequence of articles.